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FILED

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APR 20 2011

JEANNE HORN, CLERK  
BY CHONDI HAGEN  
Deputy

State's Proposed Limiting Instruction (4/29/2011)

Ladies and gentlemen, the State must prove guilt beyond a reasonable doubt based on the evidence. The defendant is not required to produce evidence of any kind. The decision on whether to produce evidence is left to the defendant acting with the advice of an attorney. The defendant's decision not to produce any evidence is not evidence of guilt. You may, however, consider or decline to consider an inference that facts are unfavorable to the defendant based upon defendant's failure to produce evidence that was available to defendant.

Source:

RAJI (3<sup>rd</sup>) Criminal 16;

*State ex rel. McDougall v. Corcoran*, 153 Ariz. 157, 160, 735 P.2d 767, 770 (1987)

*State v. Lehr*, 201 Ariz. 509, 522, 38 P.3d 1172, 1185 (2002)

*State v. Edmisten*, 220 Ariz. 517, 525, 207 P.3d 770 (App. 2009)